

CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

Sec.

- 31. Regulations for agents and attorneys.
- 32. Suspension or exclusion from practice.
- 33. Unauthorized representation as practitioner.

AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in chapter heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 500.

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent and Trademark Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11 (R.S. 487, amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).

The present statute is divided into two sections, 31 and 32.

Changes in language are made.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32 of this title; title 5 section 500.

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its

rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 35, U.S.C. 1946 ed., § 11 (R.S. 487 amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).

See note under section 31.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(July 19, 1952, ch. 950, 66 Stat. 796; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11a (May 9, 1938, ch. 188, 52 Stat. 342).

This is a criminal statute. The language has been considerably simplified and the upper limit of the penalty is increased.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Advertising practice before departments or offices of Government, see section 501 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

CHAPTER 4—PATENT FEES

Sec.

- 41. Patent fees.
- 42. Payment of patent fees; return of excess amounts.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design cases, \$65; in addition on filing or on presentation at any other time, \$10 for each claim in independent form which is in excess of one, and \$2, for each claim

(whether independent or dependent) which is in excess of ten. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

2. For issuing each original or reissue patent, except in design cases, \$100; in addition, \$10 for each page (or portion thereof) of specification as printed, and \$2 for each sheet of drawing.

3. In design cases:

a. On filing each design application, \$20.

b. On issuing each design patent: For three years and six months, \$10; for seven years, \$20; and for fourteen years, \$30.

4. On filing each application for the reissue of a patent, \$65; in addition, on filing or on presentation at any other time, \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

5. On filing each disclaimer, \$15.

6. On appeal for the first time from the examiner to the Board of Appeals, \$50; in addition, on filing a brief in support of the appeal, \$50.

7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, \$15.

8. For certificate under section 255 or under section 256 of this title, \$15.

9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 50 cents per copy; for design patents, 20 cents per copy; the Commissioner may establish a charge not to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, \$50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, \$20; where the document relates to more than one patent or application, \$3 for each additional item.

11. For each certificate, \$1.

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent and Trademark Office, not specified above.

(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof.

(July 19, 1952, ch. 950, 66 Stat. 796; July 24, 1965, Pub. L. 89-83, §§ 1, 2, 79 Stat. 259; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 3, 89 Stat. 690.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of item 1 of subsec. (a) by Pub. L. 94-131, § 3, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 78 (R.S. 4934, amended (1) May 27, 1908, ch. 200, § 1 (part) 35 Stat. 317, 343; (2) June 25, 1910, ch. 414, § 2, 35 Stat. 843; (3) Feb. 18, 1922, ch. 58, § 9, 42 Stat. 389, 393; (4) Feb. 14, 1927, ch. 139, § 2, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, ch. 273, § 13, 44 Stat. 1335, 1337; (6) April 11, 1930, ch. 132, § 3, 46 Stat. 155; (7) June 30, 1932, ch. 314, §§ 308, 309, 47 Stat. 382, 410; (8) Aug. 9, 1939, ch. 619, § 3, 53 Stat. 1293; July 5, 1946, ch. 541, § 301 (part), 60 Stat. 446, 471).

The items in the schedule of fees are rearranged in a few instances and are numbered for convenient reference.

The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

The fee for appeal to the Board of Appeals is changed from \$15 to \$25.

Two provisos in the corresponding section of the existing statute have been made separate sections, see sections 12 and 13.

The fee for a certificate is changed from 50 cents to \$1 to correspond to the same fee in the trade-mark statute.

A new item (8) is added to go with section 205.

An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

The fee for reissue applications is changed slightly.

AMENDMENTS

1975—Subsec. (a)1. Pub. L. 94-131 inserted sentence respecting consideration of a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom as separate dependent claims in accordance with the number of claims to which reference is made for the purpose of computing fees.

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1965—Subsec. (a)1. Pub. L. 89-83, § 1, increased the filing fee for original patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each claim in independent form which is in excess of one and \$2 for each claim (whether independent or dependent) which is in excess of ten, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)2. Pub. L. 89-83, § 1, applied the issue fee to reissue patents as well as to original patents, increased such fee from \$30 to \$100, and changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each page (or portion thereof) of specification as printed and \$2 for each sheet of drawing.

Subsec. (a)3. Pub. L. 89-83, § 1, changed the fee structure applicable to design patents from a filing fee of \$10, \$15, or \$30 for terms of 3½, 7, or 14 years, respectively, to a filing fee of \$20 and an issue fee of \$10, \$20, or \$30 for terms of 3½, 7, or 14 years, respectively.

Subsec. (a)4. Pub. L. 89-83, § 1, increased the filing fee for reissue patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty over and above the number of claims in the original patent to \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of

claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89-83, § 1, increased the fee for filing disclaimers from \$10 to \$15.

Subsec. (a)6. Pub. L. 89-83, § 1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from \$25 to \$50, and added the additional \$50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89-83, § 1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from \$10 to \$15.

Subsec. (a)8. Pub. L. 89-83, § 1, added the fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from \$10 to \$15.

Subsec. (a)9. Pub. L. 89-83, § 1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89-83, § 1, changed the recording fee from \$3 for every document not exceeding six pages and \$1 for each additional two pages or less to a flat \$20 fee for every document, and substituted a \$3 fee for each additional item where the document relates to more than one patent or application for a 50 cents additional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89-83, § 2, added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89-83 provided that:

"(a) This Act [amending sections 41, 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

"(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

"(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

"(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113 (a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act."

CROSS REFERENCES

Issue of patents without fee to Government employees, see section 266 of this title.

Payment of final fee, see section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13 of this title.

§ 42. Payment of patent fees; return of excess amounts

All patent fees shall be paid to the Commissioner who, except as provided in sections 361(b) and 376(b) of this title, shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

(July 19, 1952, ch. 950, 66, Stat. 796; Nov. 14, 1975, Pub. L. 94-131, § 4, 89 Stat. 690.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of section by Pub. L. 94-131, § 4, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

AMENDMENTS

1975—Pub. L. 94-131 inserted the exception provision, ", except as provided in sections 361(b) and 376(b) of this title,".

CROSS REFERENCES

Deposit of Patent and Trademark Office fees in Treasury to appropriately designated trust-fund receipt accounts, and availability for refunds, etc., see section 725r of Title 31, Money and Finance.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.	
100.	Definitions.
101.	Inventions patentable.
102.	Conditions for patentability; novelty and loss of right to patent.
103.	Conditions for patentability; non-obvious subject matter.
104.	Invention made abroad.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

¹ So in original. Does not conform to chapter heading.